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Security Council

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Letter dated 8 August 2018 from the Ombudsperson addressed to the President of the Security Council

I have the honour to transmit herewith the fifteenth report of the Office of the Ombudsperson, pursuant to paragraph 20 (c) of annex II to Security Council resolution 2368 (2017), according to which the Ombudsperson shall submit biannual reports to the Council summarizing his activities. The report describes the activities of the Office of the Ombudsperson in the period since the issuance of the update of the Office of the Ombudsperson pursuant to Security Council resolution 2368 (2017) in lieu of a biannual report (S/2018/120), covering the period from 8 February to 7 August 2018.

I would appreciate it if the present letter, the report and its annexes were brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Daniel **Kipfer Fasciati**
Ombudsperson
Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities

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Report of the Office of the Ombudsperson pursuant to Security Council resolution 2368 (2017)

I. Background

1. The present report covers the activities undertaken by the Office of the Ombudsperson since the issuance of the update of the Office of the Ombudsperson pursuant to Security Council resolution 2368 (2017) in lieu of a biannual report (S/2018/120) on 8 February 2018.

A. Transition

2. As noted in the fourteenth report of the Office of the Ombudsperson to the Security Council (S/2017/685), the former Ombudsperson to the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities left her position on 7 August 2017. The current Ombudsperson was appointed on 24 May 2018 (S/2018/514). The position remained vacant from 8 August 2017 until the current Ombudsperson took office on 18 July 2018.

3. The former Ombudsperson left detailed instructions for the staff members supporting the Office of the Ombudsperson to ensure that the Office remained operational during the transition period (see annex I). The interim instructions were shared with the Committee. There was no objection to the Ombudsperson's instructions and the Office continued to operate informally until the current Ombudsperson assumed his duties. The present report covers the activities of the Office of the Ombudsperson undertaken pursuant to those instructions and the activities carried out since the current Ombudsperson took office.

II. Activities related to delisting cases

A. General

4. The primary activities of the Office of the Ombudsperson during the reporting period related to delisting requests submitted by individuals and entities. In line with the interim instructions, the Office issued correspondence in pending cases and prepared correspondence to be issued after the current Ombudsperson assumed his duties. The Office also sent notifications to newly listed individuals.

B. Delisting cases

5. During the reporting period, the Office of the Ombudsperson formally accepted one case that had been submitted during the previous reporting period, in the absence of an Ombudsperson (case 80), and formalized the information-gathering period. Before the current Ombudsperson assumed his functions and in accordance with the instructions issued by the former Ombudsperson, that request was evaluated for its prima facie admissibility by the Office, and the Office informally started gathering information in the case.

6. Also during the reporting period, the Office of the Ombudsperson formally accepted one new case that was submitted to the Office during the reporting period, in the absence of an Ombudsperson (case 81). In accordance with the instructions of

the former Ombudsperson, that request was evaluated for its prima facie admissibility, and the Office of the Ombudsperson informally started gathering information in the case. The request is a repeated request.

7. The Office remained in contact with the lawyer of a listed individual, as noted in the update of the Office (S/2018/120, para. 5); however, that exchange has so far not resulted in a delisting request.

8. The total number of delisting petitions submitted to the Office since its establishment was 81 as at 7 August 2018. Unless the petitioners request otherwise, all names remain confidential while under consideration and in the case of denial or withdrawal of a petition.

9. In total, the Ombudsperson has submitted 76 comprehensive reports[1] to the Committee since the Office was established. During the reporting period, no reports were submitted or presented to the Committee.

10. Since the issuance of the update of the Office of the Ombudsperson pursuant to Security Council resolution 2368 (2017) in lieu of a biannual report, there have been no retentions or removals of names from the sanctions list through the Ombudsperson process.

11. Cumulatively, since the Office was established, 77 cases involving requests made to the Ombudsperson from an individual, an entity or a combination of the two have been resolved through the Ombudsperson process or a separate decision of the Committee. In the 74 cases fully completed through the Ombudsperson process, 57 delisting requests have been granted and 17 have been refused. As a result of the 57 petitions that have been granted, 52 individuals and 28 entities have been delisted and one entity has been removed as an alias of a listed entity. In addition, three individuals were delisted by the Committee before the Ombudsperson process was completed, and one petition was withdrawn following the submission of the comprehensive report. A description of the status of all of the cases, as at 7 August 2018, is available on the website of the Office of the Ombudsperson (see https://www.un.org/sc/suborg/en/sc/ombudsperson/status-of-cases). The status of the pending cases is set out in annex II to the present report.

12. There are currently three cases pending with the Office of the Ombudsperson. All three cases are in the information-gathering phase. In the second and third cases, the Office had informally started to gather information during the absence of an Ombudsperson. There are no cases pending before the Committee. The request submitted to the Office during the reporting period was presented by an individual. To date, in total, 73 of the 81 cases have been brought by individuals, 2 by an individual together with one or more entities and 6 by entities alone. In 41 of the 81 cases, the petitioner is or was assisted by legal counsel.

C. Gathering of information from States

13. In case 79, during the previous reporting period the Committee had extended the information-gathering period by three months, as a transitional measure while awaiting the appointment of a new Ombudsperson. During the present reporting period, the information-gathering period was extended by the Committee two more

[1] This number includes one case concluded in 2011, in which the delisting request was withdrawn by the petitioner after the Ombudsperson had submitted and presented her report to the Committee. It also includes one case concluded in 2013, in which the Committee decided to delist the petitioner after the Ombudsperson had submitted her report to the Committee but before she had presented it to the same. This number does not include two additional cases concluded in 2013, in which the Ombudsperson case became moot following a decision by the Committee to delist the petitioners before the Ombudsperson had submitted her report.

times, in the continued absence of an Ombudsperson. The petitioner took note of the further extensions. During the reporting period, the Office received information from one State.

14. In case 80, during the reporting period, the Office sent one additional request for information to a State and received information from two States. Upon the formal acceptance of the case by the Ombudsperson, the delisting request and request for information was formally re-sent to six States.

15. In the case received during the reporting period (case 81), the Office informally started gathering information and sent six requests for information to States during the absence of an Ombudsperson. Upon taking office, the Ombudsperson formally accepted the case, and the delisting request and the request for information were formally re-sent to six States.

D. Dialogue with the petitioner

16. During the period under review, none of the pending cases were in the dialogue phase.

E. Access to classified or confidential information

17. In total, the Office of the Ombudsperson has entered into 19 agreements or arrangements for access to classified information. Of those, 2 agreements have been entered into with Austria and Romania, and 17 arrangements have been made with Australia, Belgium, Canada, Costa Rica, Denmark, Finland, France, Germany, Ireland, Liechtenstein, Luxembourg, the Netherlands, New Zealand, Portugal, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America. During the reporting period, and after the Ombudsperson had assumed his duties, the Office wrote to all the above-mentioned States to reconfirm the agreements and arrangements. The Ombudsperson is seeking to re-enter into the arrangements that are nominative. Efforts continue to expand the list of agreements and arrangements.

III. Summary of activities related to the development of the Office of the Ombudsperson

A. General

18. Activities to further develop and strengthen the Office of the Ombudsperson continued during the reporting period, albeit to a limited extent during the part of the reporting period when no Ombudsperson was present. During that time, the Legal Officer and Research Assistant supporting the Office ensured that all procedures were followed appropriately. The Legal Officer, in consultation with the Office of Legal Affairs, took care of the implementation of the mandate in instances where neither the former Ombudsperson's interim instructions nor resolution 2368 (2017) provided explicit guidance and ensured that the Office continued to operate in the spirit of the resolution. In some instances, the Legal Officer sought the approval of the Committee.

B. Interaction with the Committee

19. On 2 August 2018, the Ombudsperson gave a presentation in an open briefing to interested Member States organized by the Committee.

20. During the reporting period, the Office of the Ombudsperson continued to engage regularly with the Coordinator and members of the Monitoring Team. The Monitoring Team has continued to provide relevant information in accordance with paragraph 4 of annex II to Security Council resolution 2368 (2017).

C. Liaison with States, intergovernmental organizations, United Nations bodies and non-governmental organizations

21. During the reporting period, the Office of the Ombudsperson continued to interact with States, in particular States of relevance to the pending delisting petitions. The Office was also approached by a number of States and international organizations inquiring about the status of the appointment of the new Ombudsperson

D. Working methods and research

22. Casework during the reporting period involved open-source research to collect information relevant to delisting requests.

E. Website

23. The Office of the Ombudsperson continued to revise and update its website during the reporting period (see https://www.un.org/sc/suborg/en/ombudsperson). The Office published the "Historical guide of the Ombudsperson process through Security Council resolutions and reports of the Office of the Ombudsperson to the Security Council", which is a compilation of the content of the analytical sections of the reports presented by the Office of the Ombudsperson to the Security Council to date, together with relevant excerpts of the applicable resolutions of the Security Council.

F. Preparation for the arrival and onboarding of the Ombudsperson

24. The activities of the Office during the reporting period revolved around preparing for the arrival of the new Ombudsperson. The staff supporting the Office prepared a detailed induction programme, including briefings by relevant United Nations bodies. The Ombudsperson also held bilateral consultations with Committee members and interested Member States.

IV. Observations and conclusions

A. Delays caused by the prolonged absence of an Ombudsperson

25. Owing to the de facto vacancy of the position of the Ombudsperson for 11 months and 10 days, the three pending cases have suffered from different levels of delay. As at 7 August 2018, case 79 had been in the information-gathering period for 1 year, 4 months and 12 days. Although this period will come to a close at the end of the month and the case will subsequently follow the regular timelines specified in resolution 2368 (2017), the overall duration of the case has already surpassed the maximum time frame specified by that resolution. Given the absence of an Ombudsperson, the formal timelines for case 80 could start only after the current Ombudsperson assumed his duties, despite the case having been received by the Office 7 months and 21 days before the official acceptance of the case could take

place. With regard to case 81, the delay is less significant, as the case was formally accepted 1 month and 18 days after having been received.

26. Those delays, in particular the delay in case 79, have had a negative impact on the petitioners' access to due process. While the Ombudsperson cannot yet make an assessment as to whether the delay might have an impact on the outcome of the delisting requests, the delay creates a situation for petitioners in which they cannot enjoy their right to an independent and impartial review within the time frame prescribed by resolution 2368 (2017). The Ombudsperson therefore recommends that the Security Council or its Committee create an optional acting Ombudsperson mechanism, which could be activated temporarily in the case of an unforeseen absence of an Ombudsperson.

27. Given that the Ombudsperson took up his functions only very recently, he is reserving for future reports his views on the challenges highlighted by his predecessors in their reports, as well as by the Legal Officer in the update of the Office of the Ombudsperson pursuant to Security Council resolution 2368 (2017) in lieu of a biannual report. This also applies to any challenges that arose after the departure of his predecessor.

Annex I

United Nations Nations Unies

INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

TO Ms. Natacha Wexels-Riser, Legal Affairs Officer
A Ms. Laura Bianchi, Administrative and Research Assistant
Office of the Ombudsperson

DATE 7 August 2017

REFERENCE

THROUGH
S/C DE

FROM Ms. Catherine Marchi-Uhel, Ombudsperson,
DE ISIL (Da'esh) and Al-Qaida Sanctions Committee

SUBJECT **Instructions related to tasks to be performed during the upcoming**
OBJET **transition period**

1. Today is my last day as Ombudsperson. As you are aware, it is likely that the incoming Ombudsperson may only join the Office within a few months. I enclose the list of tasks which we have developed together during the last few weeks with a view to ensuring a continuous operation of the Office of the Ombudsperson during the transition period. These are the tasks I am asking you to perform until the incoming Ombudsperson takes office. Both the Security Council Affairs Division and the Committee are informed of the same.

2. I take this opportunity to thank both of you for your professional commitment and your dedication in support of the Office. It went well beyond requirements, particularly during the very demanding last few six months and weeks. I feel very blessed to have received such high level support from two great persons and I know that I leave the office in particularly able hands.

Catherine Marchi-Uhel

Ombudsperson

Tasks to be completed upon prior instruction of the outgoing Ombudsperson

- Reasons letters in delisting cases: Obtain translations for and forward Committee's reasons letters to petitioners, as needed
- Reasons letters in retention cases:
  - Prepare and obtain translations as needed for Ombudsperson's letter transmitting the reasons of the Committee (incorporating the Committee's reasons) in retention cases as needed
  - Send courtesy advance copy to the Committee (24 hours)
  - Send translated reasons letter to petitioners after the 24 hours' notice
- States' requests for Comprehensive Reports:
  - transmit request to the Committee if the State is entitled to a copy of the report under the resolution, otherwise respond to the State accordingly,
  - receive response from the Committee
  - after approval of the Committee, send watermarked and redacted (if necessary) version of the Comprehensive Report to the requesting State
- Cases 76 and 78:
  - Transmit translations of the Comprehensive Report to the Committee (triggering the 15 to 30-day period for oral presentation to the Committee)
  - If needed, prepare draft reasons in consultation with the outgoing Ombudsperson and liaise with Chair on content
- Oral presentation by my predecessor of cases No. 76 and 78 (once approved by the Committee, as noted above): Liaise with Secretariat/Chair with respect to Ms. Marchi-Uhel's oral presentation of the Comprehensive reports in cases no. 76 and 78 (date, logistics etc).
- [REDACTED]
- New requests (to the extent needed, depending on timing):
  - evaluate admissibility of incoming petitions, request additional information from petitioner if needed,
  - informally start the Information Gathering by forwarding the request to the Committee and inviting relevant States to provide information.[1]
  - conduct independent research, including contacts with external bodies as needed,
  - Prepare questions for the Petitioner and Liaise with the incoming Ombudsperson once appointed as to whether he/she would prefer questions being sent in writing to the petitioner in the Dialogue phase or to meet in person with the Petitioner, in which case, plan trip and liaise with Petitioner and state of residence accordingly.

[1] "While the legal officer may attempt to informally collect information relevant to a new petition to assist the future new Ompudsperson in making an admissibility determination, the acceptance of a new petition and the time period for the information gathering phase under Resolution 2368 Would not begin, and cooperation with the legal officer in this regard in the absence of a new Ombudsperson would be voluntary."

- Prepare draft factual portions of Comprehensive Reports, to the extent possible

- New listings: liaise with Secretariat to obtain addresses and send letter informing new listees of the possibility to seek delisting

- Update the website, request translations, send planning table to Secretariat, as needed

- Ombudsperson database: save all documents on the S drive and delete the database

- Hardcopy files: digitize any missing information from the S drive and shred paper files

- Inform the Committee/liaise with the Chair/Secretariat on any other issues as needed

- Inform petitioners and relevant States in pending cases of the appointment of the new Ombudsperson

- Inform States with whom the Ombudsperson has an agreement or arrangement for the sharing of confidential information of the departure of the Ombudsperson, and later of the appointment of the new Ombudsperson seeking renewal where needed (personal agreements)

Annex II

Status of pending cases[1]

Case 79, one individual (status: information-gathering period)

Date	*Description*
27 March 2017	Transmission of case 79 to the Committee
27 August 2018	Deadline for completion of the extended information-gathering period (three extensions of the information-gathering period approved by the Committee as a transition measure while awaiting the appointment of a new Ombudsperson)

Case 80, one individual (status: information-gathering period)

Date	*Description*
11 December 2017	Transmission of case 80 to the Committee
	Information-gathering informally started by the Office of the Ombudsperson pending formal decision on admissibility by the incoming Ombudsperson upon taking office
1 December 2018	Deadline for completion of the information-gathering period

Case 81, one individual (status: information-gathering period)

Date	*Description*
19 June 2018	Transmission of case 81 to the Committee
	Information-gathering informally started by the Office of the Ombudsperson pending formal decision on admissibility by the incoming Ombudsperson upon taking office
6 December 2018	Deadline for completion of the information-gathering period

[1] The status of all cases since the establishment of the Office of the Ombudsperson can be accessed at the website of the Office, https://www.un.org/sc/suborg/en/sc/ombudsperson/status-of-cases.